



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

June 7, 1989

Ted Williams, Director  
Department of Health Services  
State Health Building  
1740 West Adams Street  
Phoenix, Arizona 85007

Duane L. Schroufe, Director  
Department of Game & Fish  
2222 W. Greenway Rd.  
Phoenix, AZ 85023-4399

Re: 189-047 (R88-123)

Dear Mr. Williams:

You and the former director of the Arizona Department of Game and Fish have asked us to reconcile pure food health statutes with statutes concerning the disposition of edible wildlife seized by the Arizona Department of Game and Fish. Specifically, you asked:

1. Whether health statutes take precedence over game and fish statutes;
2. What should be done with seized wildlife under the current statutes;
3. Do any public institutions or charitable organizations which may accept donated wildlife comply with applicable statutes?

We conclude that we need not determine whether one statute takes precedence over another. As we construe the terms "edible wildlife," Game and Fish complies with all

Mr. Ted Williams  
Mr. Duane Schroufe  
I89-047  
Page 2

applicable statutes when Game and Fish gives edible wildlife seized by Game and Fish. Game and Fish is not authorized to give inedible wildlife to public institutions and charitable organizations.

A.R.S. § 17-309(A)(2) states in relevant part that "it is unlawful for a person to. . .[t]ake, possess, transport, buy, sell, offer or expose for sale wildlife except as expressly permitted by this title." A.R.S. § 17-240(A) states:

Wildlife seized under this title may be disposed of in such manner as the commission or the court may prescribe, except that the edible portions shall be given to public institutions or charitable organizations.

(Emphasis added.) The operative words in § 17-240(A) for our inquiry are "edible portions" of wildlife. A.R.S. § 1-213 requires us to ascribe to the word "edible" its common and approved use. "Edible" is defined as "suitable by nature for use as food esp[ecially] for human beings: nonpoisonous, eatable." Webster's Third New International Dictionary 722 (4th Ed. 1976).

Whether seized wildlife is suitable for human consumption depends, we think, upon whether the wildlife meets the standards that the legislature has prescribed for food that is sold or distributed for human consumption. Those standards appear in Title 36, Arizona Revised Statutes. In A.R.S. § 36-136(H)(4), the standard for food that is sold or distributed for human consumption is that it be "free from unwholesome, poisonous or other foreign substances and filth or disease-causing organisms." In that section the Director of the Department of Health Services is authorized to promulgate rules to assure that those who produce, process, store, handle, serve or transport food do so in a way that assures that the food will meet the standard quoted above.

A.R.S. § 36-902 prohibits the "manufacture, sale, delivery, holding or offering for sale of any food that is known to be adulterated or misbranded." A.R.S. § 36-904(A) provides in pertinent part:

A food is adulterated if one or more of the following conditions exist:

Mr. Ted Williams  
Mr. Duane Schroufe  
I89-047  
Page 3

1. It bears or contains any poisonous or deleterious substance which may render it injurious to health, but if the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health.

. . . .

4. It consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or it is otherwise unfit for food.

5. It has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health.

We find nothing to indicate that the Legislature, when it authorized Game and Fish to give seized wildlife to public institutions and charitable organizations for human consumption, intended that Game and Fish and such institutions and organizations were authorized to give, receive, handle or store wildlife in a condition or under circumstances that do not meet the standards established by the Legislature in A.R.S. § 36-136 and § 36-904.

Although the Legislature has not excepted the giving and receiving of seized wildlife from A.R.S. § 36-136 and § 36-904, the Legislature has excepted certain good faith donations of food from civil and criminal liability.<sup>1/</sup> We think that Game and Fish and prospective donees of seized wildlife may be guided by A.R.S. § 36-916, as well as § 36-136 and § 36-904 in the implementation of A.R.S. § 17-240(A).

When seized wildlife cannot be given and received for human consumption under circumstances that would satisfy A.R.S.

---

<sup>1/</sup> In A.R.S. § 36-916 the Legislature has provided that a person who makes a good faith donation of perishable food and a charitable organization or nonprofit organization that in good faith receives and distributes such food at a time when it appears to be fit for human consumption is not liable for civil damages or subject to criminal prosecution for injury or death due to the condition of the food.

Mr. Ted Williams  
Mr. Duane Schroufe  
189-047  
Page 4

SS 36-136, -904 and -916, Game and Fish may comply with A.R.S.  
S 17-240(A) by giving seized edible wildlife to charitable  
organizations that operate zoological parks, animal preserves or  
animal shelters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Corbin".

BOB CORBIN  
Attorney General

BC:FWS:lp